REDACTED – FOR PUBLIC INSPECTION

WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1135
Fax: 202 303 2000

DOCKET FILE COPY ORIGINAL

August 7, 2017

ACCEPTED/FILED

AUG - 7 2017

Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY AND ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, DC 20554

Re: ***Word Network Operating Company, Inc. d/b/a The Word Network v. Comcast Corporation and Comcast Cable Communications, LLC, MB Docket No, 17-166, File No. CSR-8938-P***

Dear Ms. Dortch:

Enclosed are an original and two (2) copies of the Public version of the Answer of Comcast Corporation and Comcast Cable Communications, LLC (together, "Comcast") in the above-captioned proceeding.

Comcast also is serving a copy of this Public Answer via overnight mail and electronic mail to counsel for Word Network Operating Company, Inc.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

Michael D. Hurwitz
Counsel for Comcast Corporation and Comcast Cable Communications, LLC

Enclosures
cc: Markham C. Erickson, Steptoe & Johnson LLP (via overnight mail and electronic mail)

No. of Copies rec'd 0+2
List ABCDE

REDACTED – FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of WORD NETWORK OPERATING COMPANY, INC. D/B/A THE WORD NETWORK, *Complainant,* vs. COMCAST CORPORATION and COMCAST CABLE COMMUNICATIONS, LLC, *Defendants.*	MB Docket No. 17-166 File No. CSR-8938-P

ACCEPTED/FILED
AUG - 7 2017
Federal Communications Commission
Office of the Secretary

To: Chief, Media Bureau

ANSWER TO COMPLAINT

Lynn R. Charytan
Francis M. Buono
Julie Laine
Frank La Fontaine
COMCAST CORPORATION
Comcast Center
1701 JFK Boulevard
Philadelphia, PA 19103
(215) 665-1700

Michael D. Hurwitz
David P. Murray
Melanie A. Medina
Brenna A. Sparks
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, DC 20006-1238
(202) 303-1000

August 7, 2017

TABLE OF CONTENTS

EXHIBITS

REDACTED – FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
WORD NETWORK OPERATING COMPANY, INC. D/B/A THE WORD NETWORK,	)	MB Docket No. 17-166
Complainant,	)	File No. CSR-8938-P
	)	
vs.	)	
	)	
COMCAST CORPORATION And COMCAST CABLE COMMUNICATIONS, LLC,	)	
Defendants.	)	

ANSWER TO COMPLAINT

Defendants Comcast Corporation and Comcast Cable Communications, LLC (together, "Comcast") submit this Answer to the Complaint (the "Complaint") filed by Word Network Operating Company, Inc. d/b/a The Word Network ("Word"). The Complaint alleges that Comcast has discriminated on the basis of affiliation by reducing distribution of Word, a network unaffiliated with Comcast, and increasing distribution of The Impact Network ("Impact"), another unaffiliated network. Word claims that these carriage decisions violate Conditions adopted by the Commission in the *Comcast-NBCUniversal Order* approving Comcast's acquisition of NBCUniversal (the "Conditions"). Word also alleges that Comcast demanded a "financial interest" in Word by seeking exclusive digital distribution rights in violation of Section 616 of the Communications Act, the Commission's program carriage rules, and the Conditions. For the reasons set forth below, none of these claims has any merit. The Complaint should be denied and dismissed as a matter of law with prejudice and without further proceedings.

INTRODUCTION AND SUMMARY

This dispute has nothing to do with discrimination on the basis of affiliation. It involves Comcast's exercise of its editorial discretion and business judgment in deciding among a mix of *unaffiliated* religious networks to best serve the needs and interests of its viewers. Last year, Comcast decided to increase distribution of Impact, the largest independent African American owned and operated religious network in the country, from approximately { } million to approximately { } million customers. In evaluating the various other religious networks Comcast carries, particularly those that appeal to African American audiences like Word and Trinity Broadcasting Network ("TBN"), Comcast also decided to reduce its distribution of Word from approximately { } million to approximately { } million customers. None of these networks is affiliated with Comcast.

Word's Complaint not only fails to make out a *prima facie* case of affiliation-based discrimination under the Commission's program carriage rules and precedent, but also fails even to properly allege such a claim. To be sure, Word does not claim that it has any *direct* evidence that it was subject to an adverse carriage decision on the basis of affiliation or non-affiliation. Word has put forth no such evidence, because there is none. Nor does Word argue, much less show, that Comcast has treated it differently from any Comcast-*affiliated* network that is *similarly situated* to it – the first prerequisite in making out a circumstantial case of affiliation-based discrimination under the Commission's rules and well-established precedent, including the recent *GSN* case. That is because Comcast does not own *any* network that, like Word, focuses on religious programming or is targeted to the African American community, let alone one, also like Word, that commands no license fees and sells no spot advertising. Word does not even try to make that case. Instead Word focuses foremost on second-guessing Comcast's carriage of Impact – an *unaffiliated* network. But Comcast's reasons for deciding to increase Impact's distribution while decreasing the distribution of Word are indisputably unrelated to affiliation and therefore are irrelevant as a matter of law.

Because it has no case that would even facially comply with the Commission's rules and precedent, Word resorts to arguing that the burden to establish a *prima facie* case of discrimination based on affiliation simply does not apply to complaints brought under the Conditions. But nothing in the Conditions eliminates this prerequisite, which the Commission adopted precisely to dispose of frivolous complaints such as this one and, in fact, has twice since affirmed its applicability to the Conditions.

Nor do the Conditions eliminate at any stage of the proceeding a complainant's burden to establish differential treatment of an affiliated network that is similarly situated to it, which is the "hallmark" requirement of a discrimination claim. Yet that showing is precisely what Word is seeking to sidestep in relying, in the end, on generalized claims that Comcast broadly treats its affiliated networks – which have no connection to or competitive rivalry with Word based on any relevant factor – "better" than it treats Word. Such generalized assertions are no more legally relevant, however, than Word's specific assertions about Comcast's carriage of Impact. Discrimination on the basis of affiliation requires a showing (among other things) that the defendant MVPD (1) has disfavored an unaffiliated network that is *similarly situated* to an *affiliated network* and (2) was actually motivated by discriminatory intent in its treatment of that network. As the Commission recently reaffirmed in the *GSN* decision, the similarly situated showing is essential at both the *prima facie* and merits stages for any claim that affiliation-based discrimination may have occurred under the program carriage rules, *before* the Commission even inspects a defendant MVPD's actual reasons for the decision at issue. The obligation to establish *competitive similarity* between affiliated and unaffiliated networks also is a core reason that the program carriage regime passes muster under the Constitution as narrowly tailored economic regulation and not impermissible content-based speech regulation.

Beyond lacking any legal basis, Word's generalized claims also are untrue. Word's purported evidence of improper favoritism – using inaccurate and inapt data about NBCUniversal networks' license fees, carriage, and ratings – is overly simplistic and highly misleading. The fact that Comcast provides broad carriage and pays license fees to many NBCUniversal networks is unremarkable in light of the fact that Comcast does the same for scores, if not hundreds, of unaffiliated networks (and nearly all other distributors do the same for NBCUniversal networks).

Word's claim that Comcast demanded exclusive digital rights to the network as a condition of carriage is equally baseless. Comcast neither sought nor demanded *any* digital rights. Further, such rights do not constitute a "financial interest" within the meaning of the program carriage statute and rules. Nor, had they been granted, would such rights establish any attributable interest between an MVPD and a programmer. Under Word's reckless theory, the licensing of digital distribution rights, which is now commonplace in the industry, would transform most programmers and MVPDs alike into vertically-integrated companies, subjecting them, respectively, to program access and program carriage obligations. Such an absurd result would exceed anything intended or authorized by Congress under these statutory regimes.

Word's remaining claims that Comcast violated the Exclusivity and Unfair Practices Conditions rest on the same fabricated notion that Comcast demanded digital rights to the network. Besides being false, these claims are procedurally and legally defective. These two claims are unrelated to program carriage and cannot be pursued under the procedural rules incorporated into the program carriage provision of the *Comcast-NBCUniversal Order*. Moreover, by Word's own account, the purported demand went nowhere. Comcast did not "enter into or enforce" any agreement that would prohibit programming from flowing to OVDs in violation of the Exclusivity Condition. Similarly, the Unfair Practices Condition is fundamentally a sell-side, *program-access*-related condition that has nothing to do with program carriage negotiations. Yet, it also requires a showing of harm to OVDs or MVPDs that is simply not present here, even under Word's false narrative.

For these reasons, Word's Complaint is frivolous and should be denied and dismissed with prejudice in its entirety.

FACTS[1]

1. A detailed description of Comcast's internal review and deliberations in 2016 regarding its carriage of Word, decision to reduce Word's distribution in certain markets, and interactions with Word regarding this decision are set forth in the

[1] Comcast's specific responses to the Complaint's numbered paragraphs are below. Throughout this Answer, numbered paragraphs in Word's Complaint are cited in the form "Compl. ¶ __," and the exhibits attached thereto in the form "Compl. Ex. __." In addition, the following sworn statements and attached exhibits are submitted in support of this Answer: the Declaration of Jennifer Gaiski ("Gaiski Decl."), Declaration of Justin Smith ("Smith Decl."), and Declaration of Keesha Boyd ("Boyd Decl.").

accompanying declarations of Comcast executives: Jennifer Gaiski, Senior Vice President for Content Acquisition; Justin Smith, Senior Vice President for Content Acquisition; and Keesha Boyd, Executive Director for Multicultural Consumer Services. We summarize these facts and events here.

2. Comcast launched Word on certain Comcast systems in 2000 pursuant to an agreement executed on September 8, 2000 ("Agreement"). The Agreement

{

}.

3. With very limited exceptions, the programming exhibited on Word consists of (a) different ministers who pay Word hourly fees to air the ministries' programming on the network and (b) specials that appear to support various Word fundraising initiatives.

4. Since its launch in 2000, Word has essentially left its business relationship with Comcast on "auto-pilot." Word made no meaningful attempt to communicate with Comcast about its level of carriage, including in the months leading up to the {

} of the parties' Agreement.

5. Because Comcast operates in an intensely competitive video programming distribution marketplace, Comcast continuously evaluates the mix of programming that it offers to customers within the constraints of each system's bandwidth and the opportunity cost of not carrying other networks that may be attractive to Comcast's customers.

6. In 2016, Comcast's Content Acquisition team, led by Ms. Gaiski, began a review of the many religious networks carried on Comcast's systems, including Word, particularly with an eye to their appeal among African American customers. All of these

religious networks are unaffiliated with Comcast. This review included an examination of the religious networks, their program offerings, the level of consumer interest for their programming in particular regions, and the networks' level of engagement with Comcast and the local communities where they are carried.

7. In September and October of 2016, Comcast reviewed the results of third-party research indicating viewing preferences among African American pay-TV consumers. The audience survey was conducted between June 21 and July 13, 2016. It showed that Comcast carries multiple religious networks that are popular among African American customers, and that other religious networks had greater reach, as well as higher intensity viewership, among African American viewers than Word.

8. Comcast's Content Acquisition team conducted additional research and analysis of programming available on the various religious networks. These efforts showed that Word's programming substantially overlapped with many of the other religious networks carried by Comcast at various distribution levels – including Impact – and that there would be adequate substitutes for Word viewers if Word were no longer available on Comcast systems in certain markets.

9. The research further showed that Impact offers a broader selection of programming, spanning a greater variety of genres, than Word, which almost solely airs programming from ministers who pay for their time on the network. At the time of this analysis, Impact was carried to approximately {   } million subscribers in the Heartland Region within Comcast's Central Division. The Content Acquisition team concluded that Impact's broader selection of programming offered Comcast customers additional

viewing options and content value beyond the ministry-focused programming available on Word.

10. Other factors likewise weighed in favor of increasing distribution of Impact. In contrast to Word, Impact is an African American owned and operated network, adding to the diversity of independent programming carried by Comcast. And Impact has been an active and creative partner that has sponsored concerts and other religious events in local communities that enhance the value of Comcast's carriage of the network there.

11. Based on all of these different factors, and after consultation with executives in the regions where Comcast carried Word, the Content Acquisition team decided to increase carriage of Impact by adding it to certain systems and, as part of that change, to reduce carriage of Word by removing it from certain systems. Specifically, Comcast has maintained carriage of Word in Comcast's Central Division, which includes Word's home markets, and also added Impact to those systems on or around December 13, 2016. The Comcast Northeast and West Divisions added Impact to their systems on or around January 12, 2017, and discontinued carriage of Word. As a result of these changes, Impact's carriage has increased from approximately {   } million subscribers to approximately {   } million subscribers on Comcast systems. Word's carriage has decreased from approximately {   } million subscribers to approximately { } million subscribers. Overall, a net increase of approximately 3 million Comcast customers are now receiving Word, Impact, or both.

12. On November 11, 2016, Ms. Gaiski sent a letter, via fax, to Kevin Adell, the Chief Executive Officer of Word, notifying Word of Comcast's decision in advance of the planned carriage changes.

13. On November 22, 2016, Mr. Adell and John Mattiello, Word's Director of Marketing, attended a meeting with Ms. Gaiski and other members of the Content Acquisition team at Comcast's headquarters in Philadelphia. During the meeting, Comcast explained the factors underlying its decision to reduce Word's carriage, including providing additional content and variety to its customers consistent with different systems' needs, as well as bandwidth constraints. Ms. Gaiski also indicated that Comcast was willing to consider Word's request to maintain carriage on certain of the systems at issue, and that Word was free to contact those systems as well. Comcast agreed to call Word in one or two weeks to renew their discussions.

14. Contrary to Mr. Adell's claim, Comcast did not demand (or even seek) *any* digital rights to Word programming – let alone *exclusive* digital rights – during the November 22 meeting. Moreover, Ms. Gaiski did not state at that meeting (or in any other interactions with Word) as a basis for Comcast's decision: "Because we are Comcast, and we can." Nor did she react in any inappropriate way to Word's video presentation. Each of these allegations is simply – and disturbingly – fabricated by Word and Mr. Adell.

15. Following the November 22 meeting, the Content Acquisition team began the process of identifying certain markets where it was willing to consider the possibility of continuing to distribute Word, if supported by feedback from the local systems. Ms. Gaiski and members of the team contacted regional Comcast representatives by phone to

begin these discussions, which were only preliminary due to the intervening Thanksgiving holiday.

16. On November 30, 2016, while these considerations were underway, Ms. Gaiski and Justin Smith, Senior Vice President, Content Acquisition, participated in a telephone call with Mr. Adell and Mr. Mattiello at the request of Mr. Adell. Mr. Adell informed Ms. Gaiski and Mr. Smith that the broadcast television station he owns, WADL (serving Detroit, Michigan), would not renew its deal with NBCUniversal to carry certain NBCUniversal programming, and that he was running ads against Comcast on his radio station, WFDF (also serving Detroit). Mr. Adell also said that he was planning a protest outside of Comcast's headquarters for December 2, 2016. Ms. Gaiski and Mr. Smith reiterated that Comcast was continuing internal discussions and reaching out to the local markets regarding whether to maintain carriage of Word in additional markets, but had not yet come to any final determinations given the short time period since their initial meeting, which included the Thanksgiving holiday. Mr. Adell seemingly became angry that Comcast did not have a definitive response and abruptly hung up the phone, ending further discussions.

17. Immediately following the November 30 call, Word launched a public relations campaign that encouraged its viewers to complain directly to Ms. Gaiski and Mr. Smith and publicized their office telephone numbers and email addresses. Word also organized protests at Comcast's headquarters in Philadelphia in December 2016 and January 2017. Protestors reportedly were offered payment and free transportation to spend the day picketing.

18. In addition, in early January 2017, Word published a letter on its website that purported to be from Reverend Al Sharpton accusing Comcast of violating its Memorandum of Understanding with African American leadership organizations in the Comcast-NBCUniversal transaction ("MOU"). Reverend Sharpton subsequently advised Mr. Adell that Mr. Adell had "misinformed" him regarding the facts and had "altered [the] letter without [Reverend Sharpton's] consent." Reverend Sharpton further stated that Comcast had not made any channel lineup changes that undermined its commitment to the African American community or violated the MOU and directed Mr. Adell to cease such misrepresentation. Despite these demands, Word left the offending letter on its website for months.

19. Given the non-productive and hostile nature of Word's conduct as reflected in the November 30, 2016 phone call and immediately thereafter, combined with the lack of any contrary feedback from the local systems, Comcast proceeded with its planned carriage changes for Word.

20. Despite Word's public relations campaign, Comcast experienced minimal negative customer response to these carriage changes. The vast majority of responses were received prior to any changes, and most came from customers residing in areas where Comcast *maintained* carriage of Word, such as Detroit in Comcast's Central Division (where Mr. Adell was running ads on his radio station and on social media encouraging customers to contact Comcast). Following the reduction in Word's carriage in January 2017, Comcast received fewer than 50 emails or complaints in total from the approximately { } million customers who were receiving Impact instead of Word in the affected local markets.

21. Word sent Comcast a notice of its intent to file a program carriage complaint on February 6, 2017, asserting, among other things, that Comcast was discriminating against Word in favor of Oxygen, a Comcast-affiliated NBCUniversal network, and that Comcast had some affiliation with Impact that drove its carriage decision.[2] Comcast replied on February 16, 2017, as required by Commission rules, explaining that: (1) Oxygen is not similarly situated to Word (and, in fact, is a network targeted to "young multicultural women" that is being rebranded as a crime network); (2) Comcast is not affiliated with Impact in any way; and (3) Word's other allegations were frivolous.[3] Word sent Comcast a subsequent notification letter on May 19, 2017.[4] That notification contained entirely new complaint theories, including scattershot claims of discrimination based on *all* Comcast-affiliated networks and a newly-fabricated allegation that Comcast demanded exclusive digital rights to Word during the November 22, 2016 meeting.[5] Comcast replied to this subsequent letter on May 26, 2017, explaining that Word's newfound theories were, again, baseless.[6] Word filed the instant Complaint against Comcast on June 8, 2017.

ARGUMENT

I. WORD'S COMPLAINT FAILS TO STATE A COGNIZABLE PROGRAM CARRIAGE DISCRIMINATION CLAIM.

22. Under the Commission's program carriage rules and precedent, a complainant has two paths, at least initially, to state a program carriage discrimination

---

2 Compl. Ex. 5.

3 Compl. Ex. 6; 47 C.F.R. § 76.1302(b).

4 Compl. Ex. 7.

5 *Id.* at 3.

6 Compl. Ex. 8.

claim on the basis of affiliation: (1) via direct evidence or (2) via circumstantial evidence. The first path can be quickly disposed of here. Word does not even purport to put forth any direct evidence that "on its face clearly shows [the] decision was based on affiliation (or non-affiliation), without requiring any inference or presumption."[7]

23. Word's claims fare no better along the second path. To the extent it relies on circumstantial evidence, a complainant must establish, among other things, evidence that the defendant MVPD has treated the complainant's network differently than a *similarly situated* network that is *affiliated* with the MVPD. This fundamental requirement of discrimination law applies both (a) at the initial pleading stage to determine whether a complainant has made a preliminary *prima facie* showing sufficient to allow its case to proceed, and (b) ultimately when evaluating the merits of the complaint, at which point the complainant also must prove that the MVPD's carriage decision was motivated by discriminatory intent and not a legitimate business reason.[8]

24. Word's Complaint fails at the starting gate. Because Impact is indisputably *un*affiliated with Comcast, Comcast's decision to increase carriage of Impact while reducing carriage of Word cannot support a claim of *affiliation*-based discrimination. Instead, Word attempts to compensate for this glaring deficiency by focusing on Comcast-affiliated networks that are not remotely comparable to Word. But that pleading theory is frivolous. As *GSN* makes clear, the linchpin of discrimination is establishing that *like* things are treated *unalike*, and that what distinguishes them is their affiliation status.

---

7 *Game Show Network, LLC v. Cablevision Systems Corp.*, Memorandum Opinion and Order, FCC 17-96 ¶ 30 (July 14, 2017) ("*GSN Order*").

8 *See, e.g.*, *id.* ¶¶ 26, 42-44, 63.

A. The *Prima Facie* Requirement Applies to Program Carriage Complaints Brought Under the *Comcast-NBCUniversal Order*.

25. Unable to allege any discrimination involving a similarly situated Comcast-affiliated network, Word wrongly asserts that it has no obligation to satisfy the *prima facie* procedural requirements of Section 76.1302 when submitting a program carriage dispute under the *Comcast-NBCUniversal Order*.[9] This self-serving theory is simply wrong. In its 2011 program carriage rulemaking order and most recently in the *Liberman* case, the Commission has twice reaffirmed that the *prima facie* requirement applies to complaints brought under the program carriage discrimination provision of the *Comcast-NBCUniversal Order*.[10] Further, the Court of Appeals for the Second Circuit and the Commission both have emphasized the importance of this *prima facie* showing to guard against frivolous complaints such as Word's and to avoid any potential chilling effect on MVPDs' protected speech.[11]

---

[9] *See* Compl. ¶¶ 3, 14 n.14, 44. According to Word, these requirements only apply to complaints brought under Section 76.1301 of the Commission's rules. *Id. But see Applications of Comcast Corporation, General Electric and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, 26 FCC Rcd. 4238, App. A § III.1 (2011) ("*Comcast-NBCUniversal Order*"); *discussion infra* Section I.B.1 & note 13.

[10] *Revision of the Commission's Program Carriage Rules, Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Report and Order and Notice of Proposed Rulemaking, 26 FCC Rcd. 11494 ¶ 33 (2011) ("*2011 Program Carriage Order*") ("[W]e note that the number of cable-affiliated networks recently increased significantly after the merger of Comcast and NBCUniversal, thereby highlighting the continued need for an effective program carriage complaint regime. The Commission noted that that transaction would 'result in an entity with increased ability and incentive to harm competition in video programming by engaging in foreclosure strategies or other discriminatory actions against unaffiliated video programming networks.' *The Commission specifically relied upon the program carriage complaint process to address these concerns*." (emphasis added and citations omitted)); *Liberman Broadcasting, Inc. v. Comcast Corp. and Comcast Cable Communications LLC; Program Carriage Complaint*, Memorandum Opinion and Order, 31 FCC Rcd. 9551 ¶ 5 (MB 2016) ("When the Commission approved Comcast's acquisition of NBCU, it imposed certain conditions on Comcast's carriage of unaffiliated video programming. Specifically, the Commission barred Comcast from discriminating against 'video programming vendors' based on affiliation. . . . The Commission directed claimants to bring claims for a violation of this condition pursuant to the program carriage complaint procedures.").

[11] *See Time Warner Cable Inc. v. FCC*, 729 F.3d 137, 167 (2d Cir. 2013) ("[T]he *prima facie* standard . . . , which requires evidence of affiliation-based discrimination and anticompetitive effect, allows the FCC to screen out frivolous complaints against MVPDs and thereby minimize the litigation burden and

26. Notably, Word has attempted to comply with all other procedural requirements of Section 76.1302 (e.g., by sending a pre-filing notice, arguing that its case is timely filed, etc.).[12] Its initial notice letter even purported to identify Oxygen as a similarly situated Comcast-affiliated network to Word, which it is plainly not, and suggested that Impact was affiliated with Comcast, which it is not.

27. Given the absence of any affiliation-based discrimination here, it is perhaps understandable that Word would prefer to opt out of the *prima facie* requirement altogether. But Word may not pick and choose the program carriage procedural rules that apply to it, much less rewrite the relevant provisions of the *Comcast-NBCUniversal Order*. Because Word has ignored – and thus failed to satisfy – the threshold *prima facie* requirement, its Complaint should be dismissed on this ground alone.

B. Word Does Not and Cannot Show Discrimination on the Basis of Affiliation.

28. To be sure, Word's effort to avoid the application of the *prima facie* requirement underscores that there is no legitimate basis to proceed to further evidentiary proceedings. At the merits stage, Word would still be required to demonstrate that (a) Comcast treated it differently from a similarly situated Comcast-affiliated network in order to establish a valid claim of discrimination on the basis of affiliation, and

---

any possible chilling effect [on speech]."); *see also 2011 Program Carriage Order* ¶ 10 ("[W]e believe that retaining this [*prima facie*] requirement is important to dispose promptly of frivolous complaints and to ensure that only legitimate complaints proceed to further evidentiary proceedings."); *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Report and Order, 9 FCC Rcd. 2642 ¶ 35 (1993) ("*1993 Program Carriage Order*") (noting that the program carriage rules adopted "are intended to avoid constraining aggrieved programming vendors from filing legitimate complaints, but at the same time must afford the statutory protection to multichannel distributors from frivolous complaints").

12 *See* Compl. Ex. 5.

(b) impermissible factors actually motivated Comcast's conduct. Because no such discrimination has occurred here, Word has not satisfied and cannot satisfy either of these requirements, as its deficient pleading demonstrates.

1. The Program Carriage Discrimination Provision in the *Comcast-NBCUniversal Order* Relies on the Standards for Discrimination Embodied in the Statute and in the Commission's Program Carriage Rules and Precedent.

29. The *Comcast-NBCUniversal Order* did not adopt new standards for program carriage discrimination applicable only to Comcast under the Conditions. Rather, the discrimination provision relies on nearly identical language as is found in Section 616(a)(3) and Section 76.1301(c) of the Commission's rules.[13] Further, the Commission explicitly stated that the prohibition on discrimination on the basis of affiliation or non-affiliation in the Conditions was consistent with the program carriage statute and the Commission's applicable rules.[14]

2. Word Has Not Alleged, Much Less Demonstrated, That It Is Similarly Situated to a Comcast-Affiliated Network.

30. Under well-established Commission precedent, in order to prevail on the merits of a discrimination complaint, Word must, among other things, identify a similarly

[13] *Compare* 47 U.S.C. § 536(a)(3) (directing the Commission to promulgate rules to prevent MVPDs from "discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors"), *and* 47 C.F.R. § 76.1301(c) ("No [MVPD] shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors."), *with Comcast-NBCUniversal Order*, App. A § III.1 ("Comcast shall not discriminate in Video Programming distribution on the basis of affiliation or non-affiliation of a Video Programming Vendor in the selection, price, terms or conditions of carriage[.]").

[14] *See Comcast-NBCUniversal Order* ¶ 123 n.293 ("*Consistent with Section 616(a)(3), the Commission's rules, as well as the non-discrimination condition adopted herein*, proscribe an MVPD from discriminating in 'video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage.' 47 C.F.R. § 76.1301(c)." (emphasis added)).

situated Comcast-affiliated network against which it competes for programming, advertisers, target audience, license fees, and other relevant factors of similarity or competition.[15] Word does not even attempt to identify any such Comcast-affiliated network here because there is none. Most critically, Comcast does not own a network featuring religious programming. Nor does Comcast own a network targeted primarily to the African American community. Beyond that, Word has no spot advertising, whereas all of Comcast's affiliated networks do. Word does not charge license fees to distributors, whereas Comcast's affiliated networks do charge such fees. Comcast-affiliated networks pay for their programming, whereas Word's business model is to charge programmers.[16]

31. Further, contrary to Word's contention, the similarly situated analysis is not limited to determining whether a complainant has established a *prima facie* case of discrimination. It is a necessary and critical component of any circumstantial program carriage discrimination complaint, including under the *Comcast-NBCUniversal Order*. As the Commission made clear in that order, the provision concerns potential harm to unaffiliated networks that are *close substitutes* for or *rivals* with Comcast-affiliated

---

[15] *See, e.g.*, *GSN Order* ¶ 42 (rejecting program carriage discrimination claim where the complainant "failed to show that [its] programming was similarly situated to that of [MVPD] affiliates"); *id.* ¶ 62 (stating that the rules require a complainant to point to a similarly situated network).

[16] If anything, the Complaint attempts to highlight precisely *the opposite* and takes pains (in both the Complaint and report by Dr. Harold Furchtgott-Roth) to underscore, albeit in a conclusory fashion, the "substantial covariance," i.e., *difference*, between Word's programming and all other programming Comcast carries, including its affiliated programming, in an attempt to demonstrate the "value" to Comcast of distributing Word. *See* Compl. ¶ 67; Compl. Ex. 3, Furchtgott-Roth Decl. ¶ 23. Merely employing economic terminology, however, does not confer any legal significance to Word's claim. Moreover, as explained below, Word's programming is not in fact unique, as similar ministry programming and the same ministers are featured on other networks and broadcast stations that Comcast carries. *See* discussion *infra* Section III.

networks.[17] Absent this core concept of economic rivalry between affiliates and non-affiliates, "discrimination" has no meaning within the context of the program carriage regime and, as discussed below, would not survive constitutional scrutiny.

32. The relevant legislative history and decades of Commission and judicial precedent further underscore that a similarly situated analysis and showing of disparate treatment is the "hallmark" of establishing discrimination on the basis of affiliation. When Congress first adopted Section 616, it made clear that it "d[id] not intend . . . for the Commission to create new standards for conduct in determining discrimination under this section. An extensive body of law exists addressing discrimination in normal business practices, and the Committee intends the Commission to be guided by these precedents."[18] As the Commission has further explained:

> Section 616 clearly speaks in terms of prohibiting discrimination. Admitting evidence of disparate treatment of similarly situated parties as circumstantial evidence supporting a showing of intentional discrimination is a hallmark of discrimination law. Congress intended this kind of analysis to be applied under Section 616.[19]

---

17 *Comcast-NBCUniversal Order* ¶ 119 ("While video programming is a differentiated product market, it is nevertheless evident that Comcast-NBCU's affiliated programming will include networks that could be considered *close substitutes* for a much larger set of unaffiliated programming than is currently the case for Comcast. For example, Bloomberg TV is likely a close substitute for Comcast-NBCU's CNBC and CNBC World networks, and networks such as ESPN and Fox Sports Network may be close substitutes for Comcast-NBCU's Versus network, which also offers a variety of sports programming. Even within a densely packed product market with differentiated products, buyers may see some differentiated products as closer substitutes than others, so Comcast's ability to disadvantage or foreclose carriage of *a rival programming network* can harm competition. In other words, the loss of a substitute product by itself can harm competition by reducing a competitive constraint, with an adverse effect that increases with perceived substitutability. By foreclosing or disadvantaging *rival programming networks*, Comcast can increase subscribership or advertising revenues for its own programming content." (emphasis added and citations omitted)); *see also id.*, App. B ¶¶ 65-71 (examining the potential competitive effects to Comcast's rival video programming networks).

18 H. Rep. No. 102-628, at 110 (1992); *2011 Program Carriage Order* ¶ 81 n.280 (quoting this language from the legislative history); *see also* S. Rep. No. 102-92, at 27 (1992), *as reprinted in* 1992 U.S.C.C.A.N. 1133, 1160 ("To ensure that cable operators do not favor their affiliated programmers over others, the legislation bars cable operators from discriminating against unaffiliated programmers.").

19 *Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, 27 FCC Rcd. 8508 ¶ 95 (2012), *rev'd on other grounds*, *Comcast Cable Commc'ns, LLC v. FCC*, 717 F.3d 982 (D.C. Cir. 2013).

Likewise, the Court of Appeals for the Second Circuit has observed that:

> [T]he [program carriage] standard simply employs a hallmark of discrimination law, the comparison of similarly-situated parties, as a vehicle for determining whether an MVPD is discriminating against unaffiliated networks in a way that impedes fair competition.[20]

33. As noted above, the Commission adhered to these same legal principles in the recent *GSN* decision. Although the Media Bureau found that GSN had established a *prima facie* case of discrimination, the Commission ultimately concluded that GSN had failed to show that its programming was similarly situated to that of any former Cablevision affiliated-network – a finding fully in accord with other program carriage precedent.[21] For this and other reasons, the Commission reversed the ALJ's initial decision and denied the complaint.

34. The lack of *any* evidence that Word's programming is similarly situated to *any* Comcast-affiliated network makes the deficiencies of its pleading here even more apparent than the complaint rejected in *GSN*.[22]

---

20 *Time Warner*, 729 F.3d at 157 (internal citations omitted); *see also* Final Form Brief of Respondents at 27-28, *Time Warner Cable Inc. v. FCC*, No. 11-4138 (2d Cir. Aug. 14, 2012) ("The FCC examines whether programming is 'similarly situated' simply to ascertain whether the complainant has made a circumstantial case of discrimination – which logically entails a comparison of the defendant MVPD's treatment of its own affiliates with its treatment of nonaffiliates. When an unaffiliated network relies on circumstantial evidence to support its claim that the defendant afforded preferential treatment to its own affiliated networks, it makes sense to inquire whether the programming carried on the networks is similar.").

21 *GSN Order* ¶ 66; *see also Herring Broadcasting Inc. d/b/a WealthTV v. Time Warner Cable, Inc., Bright House Networks, LLC, Cox Communications, Inc., and Comcast Corporation*, Memorandum Opinion and Order, 26 FCC Rcd. 8971 ¶¶ 19-22 (2011) ("*WealthTV*") (upholding ALJ's decision to deny the complaint because WealthTV had failed to demonstrate that it was similarly situated to the defendant MVPDs' affiliated networks); *Herring Broad. Inc. v. FCC*, 515 F. App'x 655, 657 (9th Cir. 2013) (upholding Commission's denial of the complaint and rejecting WealthTV's argument that the Commission erred by not applying the burden-shifting framework used in the employment discrimination context because "even under the employment discrimination framework, WealthTV's claim *would still hinge on whether the two networks were similarly situated*." (emphasis added)).

22 *See, e.g., GSN Order* ¶¶ 45-62 (while a complainant need not "point to an identical comparator," it must still establish that an affiliated-network is similarly situated based on the combination of factors "put forth by the claimant"). Word dedicates a substantial portion of its Complaint to discussing and casting

3. <u>Comcast's Treatment of Affiliated Networks That Are *Dissimilar* to Word Does Not, and Cannot, Create a Basis for a Program Carriage Discrimination Claim.</u>

35. Word's claim of affiliation-based discrimination instead rests entirely on generalized allegations that Comcast treats its affiliated networks, such as USA, Bravo, Oxygen, NBC Universo, and Syfy, "better" than Word through broader distribution and the payment of license fees.[23] None of these is a religious network or bears any resemblance to Word. Comcast's treatment of entirely *dissimilar* affiliated networks provides no grounds for a program carriage claim by an unaffiliated network.

36. The program carriage regime, as relied upon in the Conditions, is not intended to guarantee that any and all unaffiliated networks receive parity of distribution with any and all affiliated networks, which is precisely the theory Word attempts to advance here. To the contrary, Congress expressly preserved Comcast's (and all other MVPDs') rights to engage in robust program carriage negotiations and to make editorial and business judgments as to the value offered by the networks to Comcast customers.[24] The program carriage "statute prohibits only discrimination *based on* affiliation,"[25]

---

aspersions on Impact. Because Impact is an unaffiliated network, Word's allegations are legally irrelevant. They are also inaccurate. For example, Word claims that Impact delivers a poor quality signal to Comcast. To the contrary, Impact primarily delivers its programming to Comcast via a good quality fiber connection.

[23] *See* Compl. ¶¶ 9, 72-84.

[24] Indeed, both Congress and the Commission sought to ensure that the program carriage regime under Section 616 and its implementing rules does not "preclude[] legitimate business practices common to a competitive marketplace," and "preserves the ability of affected parties to engage in legitimate, aggressive negotiations," consistent with Congress's directive "to rely on the marketplace, to the maximum extent feasible" to achieve its policy objectives. *1993 Program Carriage Order* ¶¶ 14, 15; *see also* Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, §§ 2(b)(1)-(2), 106 Stat. 1460, 1463 ("1992 Cable Act") ("It is the policy of the Congress in this Act to . . . rely on the marketplace, to the maximum extent feasible" to achieve "the availability to the public of a diversity of views and information through cable television and other video distribution media[.]").

[25] *Comcast Cable Commc'ns, LLC v. FCC*, 717 F.3d 982, 985 (D.C. Cir. 2013) (emphasis in original) (stating that "if the MVPD treats vendors differently based on a reasonable business purpose, . . . there is no violation," and finding that Comcast had a valid business justification to decline to increase distribution of Tennis Channel because it would not have conferred an affirmative net benefit to Comcast);

which, as shown above, requires a threshold similarly situated showing that Word cannot make. Moreover, as the Commission recently noted in *GSN*, an "MVPD's general favoritism towards its affiliates [is] insufficient to support a program carriage complaint when . . . the adverse carriage decision was made based on" the MVPD's reasonable business judgment.[26]

37. For this reason, the comparisons that Word and its experts purport to make of Comcast's carriage of Word with Comcast's carriage of these decidedly *dissimilar* Comcast-affiliated networks are immaterial as a matter of law.[27]

38. Besides being legally irrelevant, Word's claims about Comcast's carriage of NBCUniversal networks are flatly untrue. Comcast does not favor its affiliated networks in the terms and conditions of carriage.[28] Comcast carries *hundreds* of networks. Six out of every seven networks that Comcast carries are unaffiliated with the

---

see also Time Warner, 729 F.3d at 164 (The program carriage regime "does not prohibit MVPDs from declining to carry an unaffiliated network for legitimate business reasons."); *GSN Order* ¶¶ 63-76 (finding that the MVPD's identified business reasons for its carriage decision were legitimate and non-discriminatory).

26 *GSN Order* ¶ 33; *see also id.* ("If evidence that an MVPD generally looks favorably upon its affiliates were instead treated as direct evidence [of discrimination], without any showing that such a policy was the reason for a particular adverse carriage action, then such MVPDs would be subject to litigation and potential liability *any time* they take an adverse carriage action against a non-affiliate, even when it is clear that the particular action at issue was taken for other reasons unrelated to affiliation." (emphasis in original)).

27 *See* Compl. ¶ 84; Compl. Ex. 4, Report of Mark R. Fratrik and William Redpath, BIA Kelsey ("BIA Kelsey Report"). This report is also rife with inaccuracies that fatally undermine its claims of "preferential treatment." For example, the monthly subscriber fee data it uses to show that Comcast has increased its license fee payments for affiliated networks are actually *industry-wide averages* across all MVPDs. If anything, these data demonstrate the value of the Comcast-affiliated networks to *other* MVPDs. The report also relies on a purported nearly three-fold increase in Comcast's distribution of NBC Universo in 2015, *see* BIA Kelsey Report ¶ 15, but Comcast's carriage of NBC Universo (formerly mun2) has remained {
}.

28 The BIA Kelsey Report selectively focuses on Comcast's carriage of 14 of its affiliated networks in isolation and claims that Comcast gives "preferential" treatment to its networks by carrying them broadly and paying them increasing license fees, even as their ratings have flattened or declined. *See id.* ¶¶ 13-18. This comparison lacks all context and wholly ignores the marketplace in which Comcast operates.

company.[29] This includes broad distribution not only of numerous unaffiliated networks that compete with NBCUniversal networks, but also of various unaffiliated religious networks of interest to the African American community.[30] Comcast also has expanded the carriage of and paid increased license fees to *scores* of unaffiliated networks over the past seven years, even in the face of industry-wide flat or declining TV ratings.[31]

C. Word's Construction of the Program Carriage Discrimination Provision Would Violate the First Amendment.

39. Word's Complaint fails for the additional reason that its generalized claims of "discrimination," if accepted as a valid theory of unlawful discrimination, would violate the First Amendment and impermissibly infringe on Comcast's editorial discretion. Comcast and other MVPDs "engage in and transmit speech, and they are entitled to the protection of the speech and press provisions of the First Amendment."[32] Accepting Word's theory of discrimination would directly implicate the First Amendment by asking the Commission to usurp Comcast's exercise of its editorial discretion.[33]

---

29 Comments of Comcast Corp. and NBCUniversal Media, LLC, MB Docket No. 16-41, at 17 (filed Mar. 30, 2016).

30 For example, in the first quarter 2017, Comcast distributed these unaffiliated networks to millions of customers: Daystar – approximately { } million (satellite feed), { } million (broadcast); TBN – approximately { } million. Comcast's distribution of these networks has grown significantly since 2010. For example, Comcast now distributes Daystar to approximately { } million more subscribers than in the fourth quarter of 2014, and TBN has seen its distribution increase by over { } million subscribers over that same time.

31 Comcast's programming costs increased from 7 billion in 2009 to 11.6 billion in 2016. *See* Comcast Corp, Annual Report (Form 10-K), at 27 (Feb. 23, 2010), http://files.shareholder.com/downloads/CMCSA/4861774450x0xS1193125%2D10%2D37551/1166691/filing.pdf; Comcast Corp., Annual Report (Form 10-K), at 48, 51 (Feb. 3, 2017), http://files.shareholder.com/downloads/CMCSA/4861774450x0xS1193125%2D17%2D30512/1166691/filing.pdf.

32 *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 636 (1994).

33 *See, e.g.*, *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974); *Comcast Cable Commc'ns*, 717 F.3d at 993 (Kavanaugh, J., concurring).

40. In assessing the constitutionality of the program carriage regime, the Second Circuit held that it withstood First Amendment scrutiny in part only insofar as it was content neutral, and that prohibiting only discrimination based on affiliation ensured that the government's purpose was not content-based but appropriately focused on non-speech considerations such as promoting competition.[34]

41. The government's asserted interests in *Time Warner* that, in part, sustained the regime against First Amendment scrutiny included the prevention of unfair competition between MVPDs and unaffiliated networks. In other words, the similarly situated requirement is "a vehicle for determining whether an MVPD is discriminating against unaffiliated networks in a way that impedes fair competition . . . its purpose is competition based, not content based."[35] Absent this core concept of economic rivalry between affiliates and non-affiliates, "discrimination" has no meaning within the context of the program carriage regime. As the court explained:

> Precisely because it is the MVPD's own affiliations that in each case provide the benchmark for the *similarity comparison*, we conclude that the *prima facie* standard, *like the statutory provisions that inform it*, is justified without reference to content. Its purpose is to prevent an MVPD who is affiliated with programming networks from discriminating against unaffiliated networks. In short, its purpose is competition based, not content based.[36]

42. Allowing Word to untether its claims from this similarly situated requirement and compare Comcast's treatment of Word with its treatment either of

---

34 *See Time Warner*, 729 F.3d at 160-64.

35 *Id.* at 157-58.

36 *Id.* (emphasis added); *see also id.* at 158-59 ("The program carriage regime expresses no government content preference for particular ideas or viewpoints. *It simply prohibits MVPDs from discriminating against unaffiliated networks similarly situated to the MVPDs' affiliated networks.* As such, the regime is properly considered content neutral." (emphasis added)).

affiliated networks that are *not* similarly situated with Word or of other unaffiliated networks like Impact would turn the program carriage provision in the *Comcast-NBCUniversal Order* into a virtually standardless remedy that treats any difference in carriage as unlawful discrimination.[37] This would place a "greater burden on MVPDs' editorial discretion than is warranted to promote competitive and diverse programming sources" and, as such, would impermissibly infringe on Comcast's First Amendment rights.[38] Indeed, Word is specifically asking the Commission to stand in judgment of Comcast's carriage decisions based on Word's contention that it is the "superior" network to Impact.[39] As *Time Warner* makes clear, the First Amendment does not permit the government to superintend Comcast's editorial choices and make bare judgments based on content, which necessarily would be the case where, as here, both networks are unaffiliated with Comcast.[40] Adherence to the similarly situated standard is especially important since the *Comcast-NBCUniversal Order* does not include the program carriage rule language that a complainant must show that it has been "unreasonably restrained" from competing due to the alleged affiliation-based discrimination.[41] The Second Circuit found that this "unreasonable restraint" requirement – *along with* evidence of

---

37 *Cf. supra* note 25.

38 *Time Warner*, 729 F.3d at 164.

39 *See* Compl. ¶ 105.

40 *See Time Warner*, 729 F.3d at 164-67; *see also Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, Memorandum Opinion and Order, 27 FCC Rcd. 8508 ¶ 104 (2012) ("[T]he equal carriage requirement only requires Comcast to carry Tennis Channel to the extent it carries networks we have found to be similarly situated. In other words, the remedy requires no more than that Tennis Channel not be carried in a discriminatory manner, and does not burden substantially more speech than necessary to achieve that end."); *Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, Order, 27 FCC Rcd. 9274 ¶ 35 (OGC 2012) ("[T]he 'similarly situated' requirement actually protects Comcast by heightening the complainant's burden for establishing discrimination.").

41 *Comcast-NBCUniversal Order*, App. A § III.1.

discrimination against a rival unaffiliated network – renders the program carriage regime "narrowly tailored" to the government's asserted interests.[42]

43. For the same reasons, the relief requested by Word – namely, forcing Comcast to restore its carriage of Word in all Comcast markets (and to maintain such carriage in perpetuity) in the absence of any alleged discrimination favoring a similarly situated affiliated network[43] – would constitute compelled speech and would not be narrowly tailored to achieving an important government interest.[44] Ordering Comcast to distribute Word to customers when it otherwise would choose not to, based on its reasonable business judgment and editorial discretion, would directly infringe on Comcast's First Amendment rights.[45]

D. Digital Distribution Rights Do Not Establish Affiliation, Much Less Support a Discrimination Claim.

44. As a separate and even more distorted theory for its Complaint, Word states that Comcast violated the program carriage rules by claiming that Comcast "unlawfully discriminated against [Word] on the basis of affiliation by demanding digital

---

42 *Time Warner*, 729 F.3d at 164-67.

43 *See* Compl. ¶ 105.

44 *See Wooley v. Maynard*, 430 U.S. 705, 714 (1977) ("[T]he right of freedom of thought protected by the First Amendment . . . includes . . . the right to refrain from speaking at all."); *Tornillo*, 418 U.S. at 256 (holding that compelling publication of a third party's speech "operates as a command in the same sense as a statute or regulation forbidding [the newspaper] to publish a specified matter" and "exacts a penalty on the basis of the content of a newspaper").

45 Further, penalizing Comcast for its carriage decisions here would undermine the government's asserted interest in promoting competition and diversity in programming. Comcast's decision to give Impact, an African American owned new entrant network, greater distribution plainly supports programming diversity and competition. *See 2011 Program Carriage Order* ¶ 1 (stating that the Commission intended the program carriage rules to "benefit consumers by promoting competition and diversity in the video programming and video distribution markets"); *Time Warner*, 729 F.3d at 160 (noting that the Commission reasoned that the program carriage regime serves an important government interest by promoting "a diversity of information sources in the video programming market"); *cf. Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976) ("[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.").

rights to [Word]'s programming, which, if granted, would constitute an affiliation interest."[46] Comcast never made such a demand.[47] But this claim – even assuming it is cognizable as a discrimination claim – also fails as a matter of law.

45. The Commission's rules clearly set out what constitutes an attributable interest and affiliation for purposes of the program carriage rules and the non-discrimination condition.[48] These rules have nothing do with, and make no mention of, distribution rights.[49] Word contends that { } and "exceed[s] the Commission's threshold for attributable interest of an affiliate."[50] Though not at all clear, this { } statement is perhaps a reference to the five percent attribution threshold for *voting stock interest* in a corporation. Such an assertion is dubious given the extent of Word's distribution on MVPD platforms. But whether accurate or not, it is wholly inapposite.[51] Negotiated rights to distribute programming, which are the very foundation of the video marketplace, do *not* confer on the MVPD a cognizable ownership interest in the programmer

46. Digital distribution agreements between MVPDs and programmers are commonplace in today's marketplace and are beneficial to consumers, as the Commission

---

46 Compl. ¶¶ 85-86.

47 *See* Gaiski Decl. ¶ 24; *see also* Smith Decl. ¶ 6; Boyd Decl. ¶ 8.

48 *See* 47 C.F.R. §§ 76.1300(a)-(b); *see also id.* § 76.501 notes 1-5.

49 Indeed, in 2011, the Commission considered whether to implement changes to broaden its definition of "affiliated" and "attributable interest," and sought comment on whether there were "other kinds of relationships between a programming vendor and an MVPD, *other than those involving common ownership or management*, that should nonetheless be considered 'affiliation' under [the] rules." *2011 Program Carriage Order* ¶ 78 (emphasis added). Tellingly, the Commission never took any further action to expand this definition.

50 Compl. ¶ 86.

51 *See id.*

has recognized.[52] Word's suggestion that digital distribution agreements constitute an attributable interest would lead to the absurd conclusion that Comcast and most other MVPDs are "affiliated" with nearly all programmers for purposes of the program carriage rules. Moreover, Word's logic would seemingly apply even to traditional distribution agreements between MVPDs and programmers, which indisputably involve valuable rights, meaning that an MVPD would be "affiliated" with any programmer it carries (and such programmers would be subject to program access obligations under the same theory).[53] Like its other claims, Word's attempt to allege discrimination based on this theory is frivolous.

II. WORD'S CLAIM THAT COMCAST DEMANDED DIGITAL DISTRIBUTION RIGHTS IS IMPLAUSIBLE ON ITS FACE AND LEGALLY IRRELEVANT.

47. Word separately alleges that Comcast violated the program carriage rules by demanding exclusive digital distribution rights to Word as a condition of carriage in a

52 *See, e.g.*, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, 32 FCC Rcd. 568 ¶ 56 (2017) ("*Eighteenth Report*") ("MVPDs have responded to the perceived competition from OVDs by negotiating for online distribution rights for their traditional programming services" and "use their TV Everywhere offerings to differentiate their products."); *see also* SNL Kagan, *The State of Online Video Delivery* 26-50 (2016), https://www.snl.com/web/client?auth=inherit#news/document?id=37784627&KeyProductLinkType=2 (discussing the proliferation of MVPDs' TV Everywhere offerings and the expansion of "already extensive" libraries, noting that "online content availability is directly linked with carriage agreements"); Frank Arthofer & John Rose, *The Future of Television, Where the US Industry Is Heading*, BCG Perspectives, June 8, 2016, https://www.bcgperspectives.com/content/articles/media-entertainment-technology-digital-future-television-where-us-industry-is-heading/ (noting that networks are working directly with MVPDs to expand linear online TV rights).

53 *See* 47 U.S.C. § 548(b) (prohibiting "satellite cable programming vendor[s] in which a cable operator has an *attributable interest*, or satellite broadcast programming vendor[s] to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any [MVPD] from providing satellite cable programming or satellite broadcast programming to subscribers or consumers" (emphasis added)); 47 C.F.R. § 76.1001(b) (stating that cognizable and attributable interests shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501, with certain exceptions). And ironically, any such "affiliation" that were to be created by such a distribution agreement would preclude that programmer – regardless of any adverse carriage action it experiences by the MVPD – from raising a program carriage discrimination claim against that MVPD because, as its "affiliate," it would lack standing to do so. *See* 47 C.F.R. § 76.1301(c) (discrimination provision applies to "unaffiliated" video programming vendors).

November 22, 2016 meeting, which Word contends constitutes a demand for a "financial interest" in the network.[54] This allegation – which was raised for the very first time in a "supplemental pre-filing notification" tendered more than three months after the original pre-filing notice – is likewise false.[55] Comcast never demanded *any* digital distribution rights from Word, much less as a condition of carriage. Multiple witnesses present at the meeting with Mr. Adell confirm so.[56]

48. Indeed, as Word elsewhere admits,[57] the parties' discussions involved Word's efforts to convince Comcast not to *reduce* carriage, not efforts by Comcast to *increase* its rights to distribute Word over other platforms.[58] Under these circumstances, Word's newly-minted claim that Comcast demanded any digital rights, much less exclusive rights, is implausible on its face.

49. Besides being a fabrication, Word's theory that digital distribution rights constitute a "financial interest" under Section 616(a)(1) and the program carriage rules fails as a matter of law.[59] Section 616(a)(1), by its plain terms, is "designed to prevent a cable operator or other [MVPD] from requiring a financial interest in a program service as a condition for carriage."[60] This section applies to improper demands for *ownership*

---

54 *See* Compl. ¶ 94.

55 *See* Compl. Ex. 5; Compl. Ex. 7 at 3.

56 *See* Gaiski Decl. ¶ 24; Smith Decl. ¶ 6; Boyd Decl. ¶ 8.

57 *See* Compl. ¶¶ 31-35; Adell Decl. ¶¶ 26-30.

58 *See* Gaiski Decl. ¶¶ 18-24. Nor did Comcast say or do anything coercive or threatening, or anything that could plausibly be construed as such. *See id.* ¶ 23; *see also* Smith Decl. ¶¶ 5-8; Boyd Decl. ¶¶ 6-9.

59 Compl. ¶¶ 94-99.

60 47 U.S.C. § 536(a)(1). The Commission's implementing regulations use almost identical language. *See* 47 C.F.R. § 76.1301(a).

interests in the complainant's programming. The Commission made this exact point earlier this year in its most recent Video Competition Report, explaining that:

> In 1992, a large number of the most popular cable programming networks were owned by cable operators. Congress was concerned that cable operators had the ability and incentive to thwart the competitive development of additional programming networks by refusing to carry unaffiliated networks or by insisting on an *ownership stake* in return for carriage.[61]

50. Nothing in the text or legislative history of Section 616(a)(1) or Commission precedent supports Word's expansive reading of "financial interest," which would sweep in the rights to distribute content through digital platforms such as video-on-demand and TV Everywhere. Rather, these authorities make clear that Congress and the Commission equated "financial interest" with an ownership or equity interest.[62] The statute and associated rules have no application where cable operators propose arrangements to distribute a network's content on other platforms.[63]

---

61 *See Eighteenth Report* ¶ 22 n.38 (citing 47 U.S.C. § 536) (emphasis added).

62 The Senate Report confirms that the "financial interest" provision arose from concerns that, "[a]s a practical matter, it is almost impossible in the present environment to start a new cable system service without *surrendering equity* to the owners of the monopoly cable conduits." S. Rep. No. 102-92, at 24, *as reprinted in* 1992 U.S.C.C.A.N. at 1157 (quoting testimony of Preston Padden, INTV) (emphasis added). Similarly, in its rulemaking to implement Section 616, the Commission cited comments that "the intent of Section 616 is to ensure that no cable operator or multichannel distributor can demand *ownership interests* or exclusive rights in programming services in exchange for carriage." *Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992*, Second Report and Order, 9 FCC Rcd. 2642 ¶ 8 (1993) (citing Reply Comments of the Motion Picture Association of America, MB Docket No. 92-265 (Feb. 16, 1993)).

63 The text and structure of the Communications Act further confirms this interpretation. The Communications Act uses the term "financial interest" sparingly, and only once elsewhere in Title VI. In particular, Section 652 broadly prohibits cross-ownership interests between cable operators and local exchange carriers. Specifically, it prohibits cable operators and local exchange carriers from "purchas[ing] or otherwise acquir[ing] directly or indirectly *more than a 10 percent financial interest,* or any management interest" in each other. 47 U.S.C. § 572(a) (emphasis added). Modifying "financial interest" with "more than a 10 percent" clearly refers to an equity or ownership interest, the same meaning that is intended in Section 616(a)(1).

51. In an attempt to bolster its theory of a claim under Section 616(a)(1), Word relies on a Bureau-level initial decision that had nothing to do with digital rights and was never reviewed by the full Commission.[64] That decision construed "financial interest" much too broadly; but there, the rights at issue were exhibition rights to content – a package of eight live NFL games – for Comcast to feature *on its own affiliated programming network*.[65] Word's contorted view of "financial interest" is far more expansive here and would sweep in rights to distribute *another network's content* on an MVPD's digital platform (i.e., garden-variety "TV Everywhere" rights). Such a result cannot be squared with the plain language and purpose of Section 616(a)(1). To be sure, under Word's reading of "financial interest" and concocted economic theory, all MVPDs that seek TV Everywhere rights as part of a carriage negotiation are in violation of this prohibition.

52. Word's remaining claims that Comcast violated Condition IV.B.3 (the "Exclusivity Condition") and Condition IV.G.1.a (the "Unfair Practices Condition") by demanding exclusive digital rights to Word are not properly before the Commission.[66] In the *Comcast-NBCUniversal Order*, the Commission expressly limited the program carriage complaint procedures to claims brought under Section III of the Conditions.[67]

---

64 *See* Compl. ¶ 97 (citing to *Herring Broadcasting, Inc. d/b/a WealthTV, NFL Enterprises LLC, TCR Sports Broadcasting Holding, L.L.P d/b/a Mid-Atlantic Sports Network v. Comcast Corp.*, Memorandum Opinion and Hearing Designation Order, 23 FCC Rcd. 14787 (MB 2008) ("*WealthTV/NFL/MASN HDO*")).

65 *See WealthTV/NFL/MASN HDO* ¶ 61.

66 *See* Compl. ¶¶ 87-93.

67 *See Comcast-NBCUniversal Order*, App. A § III.4 ("For purposes of enforcing the Conditions of *this Section III*, any Video Programming Vendor may submit a dispute to the Commission in accordance with the Commission's program carriage complaint procedures, 47 C.F.R. § 76.1302." (emphasis added)).

These complaint procedures do not extend to alleged violations of any of the other Conditions. Accordingly, the Commission should decline to reach them here.

53. Apart from these threshold procedural defects, such claims also fail as a matter of law. The Exclusivity Condition prohibits "enter[ing] into or enforcing agreements" that would limit the provision of programming to OVDs, with certain exceptions.[68] Comcast never sought exclusive rights to Word's online programming,[69] nor did it "enter into or enforce" an agreement for any rights to such programming, much less one that impeded such programming flowing to OVDs. To the contrary, Word has long made its programming available for free over the Internet via its own website, as well as via apps on Apple TV, Google Chromecast, Roku, YouTube Red, Kindle Fire, Android and iOS devices, and Windows phones – all without any interference from Comcast.[70]

54. Word's claim under the Unfair Practices Condition fares no better. Non-exclusive digital rights arrangements are common in the marketplace and certainly do not have the purpose or effect of "hindering significantly or preventing any MVPD or OVD from providing [programming] online," as required by this Condition.[71] Further, the *Comcast-NBCUniversal Order* makes clear that the Unfair Practices Condition is an online *program access* condition, expressly intended to "augment" other online program

---

[68] *See id.*, App. A § IV.B.3 ("No C-NBCU Programmer shall enter into or enforce any agreement or arrangement for carriage on Comcast's MVPD system that forbids, limits or create incentives to limit a broadcast network or cable programmer's provision of its Video Programming to one or more OVDs.").

[69] Gaiski Decl. ¶ 24; *see also* Smith Decl. ¶ 6; Boyd Decl. ¶ 8.

[70] *See* The Word Network, Watch TWN, www.thewordnetwork.org (last visited Aug. 4, 2017).

[71] *See Comcast-NBCUniversal Order*, App. A § G.1.a.

access conditions.[72] This Condition cannot serve as a vehicle for a *program carriage* dispute.[73] Beyond that, even accepting Word's false account, no OVD or MVPD was hindered significantly or prevented from providing Word's programming online. Nor does the Unfair Practices Condition provide for the mandatory carriage remedy that Word requests, making it even more inapposite.[74]

III. COMCAST MADE A REASONABLE BUSINESS JUDGMENT TO EXPAND CARRIAGE OF IMPACT AND REDUCE DISTRIBUTION OF WORD.

55. Because the only relevant carriage decisions here involve unaffiliated networks, Comcast's reasons for increasing distribution of Impact and reducing distribution of Word are immaterial as a matter of law. Nonetheless, this decision was a product of legitimate business reasons "borne out by the record and [was] not based on [Word's] affiliation or non-affiliation."[75]

---

[72] *See id.* ¶ 89 ("We also augment the specific requirements governing online program access and other matters through a number of prohibitions against unfair practices and retaliatory conduct."). The "other matters" language most logically refers to the matters reflected in (b)-(d) of Condition IV.G.1 – namely, protections against undue influence over programmers that Comcast does not control but in which it has a limited interest (i.e., not the C-NBCU Programmers specifically covered under the online program access conditions), protections around retransmission consent, and protections against retaliation for any party that invokes the NBCUniversal Conditions or participated in the transaction proceeding.

[73] The fact that the Commission intended the Unfair Practices Condition in Section IV.G to cover program access issues is further shown by the language of Condition G.2, which clearly states: "For the avoidance of doubt, the conditions in Section IV.G do not by themselves create a right for any Person to *access a C-NBCU Programmer's Video Programming.*" *See id.*, App. A § G.2 (emphasis added).

[74] *See* Compl. ¶ 105. Of course, the appropriate remedy for these online-related Conditions – assuming a violation, which did not occur here – would be to require Comcast not to stand in the way of Word making its programming available online, which, as noted above, is already occurring.

[75] *TCR Sports Broadcasting Holding, L.L.P. d/b/a Mid-Atlantic Sports Network v. Time Warner Cable Inc.*, 25 FCC Rcd. 18099 ¶ 11 (2010) ("*MASN*"). As Ms. Gaiski states, "Word's lack of affiliation with Comcast did not factor into my or my team's decision-making concerning the carriage of Word in any way." Gaiski Decl. ¶ 4; *see also* Smith Decl. ¶ 4. Because Comcast had "legitimate reasons for" its carriage decision, "borne out by the record and are not based on the programmer's affiliation or non-affiliation," Word's discrimination claim must fail. *See MASN* ¶¶ 13-20; *see also GSN Order* ¶ 63 (finding that "Cablevision's decision to retier GSN was based on legitimate and nondiscriminatory business reasons").

56. As outlined above and detailed in the attached declarations, Comcast's Content Acquisition team conducted a thorough review of the many religious networks carried on Comcast's systems. This included third-party research of viewing preferences among African American pay-TV consumers,[76] which showed that Comcast carries multiple religious networks popular among African American customers, including TBN, Inspiration Network, Daystar, Hillsong Channel, and BET Gospel.[77] It also demonstrated that other religious networks carried by Comcast had greater reach and higher intensity viewership among African Americans than Word.[78]

57. In addition, Comcast examined internal research and analysis demonstrating that Word's programming substantially overlapped with the programming of other religious networks in Comcast's lineup.[79] Contrary to Mr. Furchtgott-Roth's assertion that Word "is substantially different from other cable networks carried by . . . Comcast,"[80] the vast majority of Word's programming is ministries, much of which can be found on other unaffiliated religious networks that Comcast carries like Daystar, Hillsong Channel, and TBN. At least 25 of the ministers that appear on Word, including the popular Bishop T.D. Jakes and Joyce Meyer, also appear on other unaffiliated

---

76 *See* Gaiski Decl. ¶ 10; Boyd Decl. ¶ 5; *see also* Smith Decl. ¶ 3. This audience research sheds light on "the intensity and size of the fan base for [Word's] content." *Comcast Cable Commc'ns*, 717 F.3d at 985.

77 Indeed, as noted above, Comcast's broad carriage of unaffiliated African American religious networks makes clear that Comcast does not discriminate on the basis of affiliation. *See* discussion *supra* note 30.

78 *See* Gaiski Decl. ¶ 10; Boyd Decl. ¶ 5; Smith Decl. ¶ 3; *WealthTV* ¶¶ 39, 42 (discussing subscriber interest and demand as legitimate business considerations).

79 *See* Gaiski Decl. ¶ 11; Smith Decl. ¶ 3; *WealthTV* ¶ 42 (citing programming overlap with other unaffiliated networks as a legitimate business justification).

80 Compl. Ex. 3, Furchtgott-Roth Decl. ¶ 23.

networks carried by Comcast.[81] Bishop T.D. Jakes, for example, appears on Word, Daystar, TBN, and Impact; and Joyce Meyer appears on Word, Daystar, Hillsong Channel, Impact, and TBN. Comcast reasonably concluded that Word viewers would be able to watch much of the programming they enjoy on other networks if Comcast were to reduce carriage of Word.

58. Comcast further determined that Impact, an African American owned and operated Christian programmer, provides a broader array of programming than Word and likely would have more appeal to Comcast customers in certain systems than Word, which primarily features ministers that pay Word for air time.[82] For example, in addition to featured ministries, Impact offers a growing array of original programming, including cooking, money management, comedy, and advice shows, among many others.[83] Impact also has been an engaged programming partner that enhances the value of its programming to Comcast subscribers by sponsoring local concerts and events in Comcast's markets.[84]

59. Finally, like other cable operators, Comcast "lacks capacity to carry all the networks that seek [carriage] and must decide what networks are in its best interest to carry."[85] Despite Word's assertion that "[its] carriage imposes no cost on Comcast"

---

[81] *See* Gaiski Decl. ¶ 11; *see also* Smith Decl. ¶ 3.

[82] *See* Gaiski Decl. ¶ 12.

[83] *Id.*

[84] *Id.* ¶ 14; *see also id.* ¶ 33 (noting that, since the carriage adjustment, "Impact has continued to engage in proactive efforts to enhance its partnership with Comcast," including participating in Comcast Cares Day and volunteering in the communities Impact serves).

[85] *WealthTV* ¶ 39; *see also id.* ¶ 67 ("[T]here are more programming vendors seeking linear carriage than bandwidth capacity to carry them, MVPDs simply cannot carry all channels that seek carriage.").

because Word "does not charge Comcast a per-subscriber fee for distribution,"[86] per-subscriber fees are not the only costs operators incur in carrying networks. Setting aside limited bandwidth to carry a network presents an "opportunity cost[]" for MVPDs, and may foreclose new carriage opportunities for other networks.[87]

60. For all of these reasons, and after consultation with executives in the regions where Comcast carried Word, Comcast determined in its reasonable business judgment that increasing distribution of Impact and reducing carriage of Word in certain systems would better serve its customers and be a more efficient use of its scarce bandwidth.[88] This decision has been further validated by the lack of customer reaction to the reduction in Word's carriage.[89] And, while Comcast expressed a genuine willingness to consider the possibility of continuing to distribute Word in certain local markets, *Word* chose to shut the door on those efforts by its own decision and conduct.[90]

---

[86] Compl. ¶ 57. Word's claim that it pays Comcast for distribution also is false. *See id.* ¶ 57; Adell Decl. ¶ 19. Word pays for distribution on Headend in the Sky ("HITS") service, which is an entirely *separate* Comcast business unit. Gaiski Decl. ¶ 21. Programmers generally do not pay for the delivery of programming to Comcast. Rather, HITS' primary benefit to Word is the delivery of its programming to dozens of other smaller cable operators, which comprise more than 98% of Word's HITS distribution. *Id.*

[87] *See TCR Sports Broad. Holding, L.L.P. v. FCC*, 679 F.3d 269, 275, 277 (4th Cir. 2012) ("*MASN II*"); *see also* Gaiski Decl. ¶ 8.

[88] Gaiski Decl. ¶ 15; *see also* Smith Decl. ¶¶ 3-4. Courts and the Commission have correctly recognized bandwidth constraints to be a legitimate business reason upon which to base carriage decisions. *See, e.g.*, *MASN II*, 679 F.3d at 277 (finding limited channel capacity to be a valid business justification); *see also MASN* ¶ 20 (same).

[89] Gaiski Decl. ¶ 31; *see MASN* ¶¶ 13-18 (holding that lack of subscriber demand is a legitimate reason to deny carriage); *WealthTV* ¶¶ 39, 42 (discussing subscriber interest and demand as legitimate business consideration); *Comcast Cable Commc'ns*, 717 F.3d at 986 (citing fact that "not one customer complained about the change" in Tennis Channel's tier placement as evidence of lack of subscriber demand).

[90] *See* Gaiski Decl. ¶¶ 26-30; *see also* Smith Decl. ¶¶ 5, 8; Boyd Decl. ¶ 6.

RESPONSE TO NUMBERED PARAGRAPHS

Except as hereinafter specifically admitted, qualified, or otherwise answered, Comcast denies each and every allegation or assertion in Word's Complaint. Comcast also denies each and every allegation or assertion in Word's Complaint for which Comcast lacks adequate information or knowledge to admit or deny. *See* 47 C.F.R. § 76.7(b)(2)(iv). Comcast responds to the numbered paragraphs in the Complaint as follows:

1. Comcast denies paragraph 1, except admits that it has carried Word since 2000 and informed Word of its decision to reduce distribution in certain markets on November 11, 2016. In particular, Comcast denies ever stating to Word that it decided to reduce Word's distribution "[b]ecause we are Comcast, and we can" or anything similar to that statement.

2. Comcast denies paragraph 2, except to state that the *Comcast-NBCUniversal Order* speaks for itself.

3. Comcast denies paragraph 3, except to state that the Communications Act of 1934, the Commission's rules, and the *Comcast-NBCUniversal Order* speak for themselves. The referenced order does not eliminate the *prima facie* requirement applicable to all program carriage complaints, including those brought pursuant to the Conditions.

4. Comcast denies the statements in paragraph 4, except to admit that it reduced distribution of Word but did so based on its reasonable business judgment and editorial discretion.

5. Comcast denies paragraph 5, except to admit that it has carried Word since 2000. Comcast states that it lacks knowledge or information sufficient to admit or deny the distribution levels of Word by other MVPDs.

6. Comcast denies the premise of paragraph 6 and the statements therein. Regarding the second sentence in paragraph 6, Comcast incorporates the text of note 86 of its Answer regarding Word's financial arrangements with Comcast's separate business unit, HITS, for delivery of Word's service primarily to other smaller cable operators.

7. Comcast denies the statements in paragraph 7. Comcast states that Impact is not "an objectively inferior network" and that Impact primarily delivers its programming to Comcast via a good quality fiber connection.

8. Comcast admits that it informed Word of its decision to reduce Word's distribution in certain markets, and incorporates by reference the text of paragraph 2 of its Answer. Comcast denies all other statements in paragraph 8. Comcast states that it analyzed religious networks and their appeal to African American viewers in order to best serve its customers. Further, Comcast was willing to consider continued distribution of Word in certain markets. It was Word's CEO who ended those discussions.

9. Comcast denies the premise of and statements in paragraph 9, except to admit that various affiliated, as well as *unaffiliated*, networks are distributed more broadly than Word based on, among other factors, the value proposition offered by those networks to Comcast and its customers. Regarding the quoted testimony in the last two sentences of paragraph 9, Comcast states that this testimony has been taken out of context and speaks for itself and is derived in part from a 2008 case that was settled prior to

adjudication by the Commission, and from a 2010 case that was vacated by the Court of Appeals for the D.C. Circuit.

10. Comcast denies the statements in paragraph 10.

11. Comcast denies the statements in paragraph 11.

12. Comcast denies the premise of paragraph 12, and states that it did not demand digital rights from Word, and denies the remaining statements in paragraph 12.

13. Comcast denies the premise of paragraph 13, and states that it did not demand Word's digital rights, and therefore denies paragraph 13.

14. Comcast admits the statements in paragraph 14, except it denies the last clause of the final sentence.

15. Comcast admits the statements in paragraph 15.

16. Comcast admits the statements in paragraph 16, except to state that Word's February 6, 2017 pre-filing notice letter did not adequately apprise Comcast of the specific nature of the complaint as required under 47 C.F.R. § 76.1302(b) and, thus, was deficient.

17. Comcast admits the statements in paragraph 17, except to state that Word's May 26, 2017 supplemental letter also was deficient.

18. Paragraph 18 contains legal conclusions to which no response is required.

19. Comcast admits the statements in paragraph 19.

20. Comcast admits the statements in paragraph 20, except Comcast lacks sufficient knowledge to admit or deny the statements regarding Word's distribution by other MVPDs.

21. Comcast lacks sufficient information to admit or deny the statements in paragraph 21.

22. Comcast admits that Word provides religious programming targeted towards African Americans and that Word has existed for 17 years, but incorporates the text of paragraphs 8 and 57 of its Answer and paragraph 11 of the Gaiski Declaration regarding Word's programming overlap with other networks. Comcast denies the remaining statements in paragraph 22.

23. Comcast denies the first sentence in paragraph 23. Regarding the final sentence of paragraph 23, Comcast admits that it previously distributed Word to approximately { } million subscribers, but denies that it distributed Word on its expanded basic tier. Comcast states that it distributed (and continues to distribute) Word on its digital preferred (D1) tier in the relevant markets. Comcast lacks sufficient information to confirm or deny the remaining statements in paragraph 23.

24. Comcast admits Word makes its programming available online through its website, but lacks sufficient information to confirm or deny the remaining statements in paragraph 24.

25. Comcast admits the statements in paragraph 25.

26. Comcast admits the first two sentences in paragraph 26. Comcast denies the remaining statements in paragraph 26. According to the Commission's latest video competition report, 99 percent of consumers have access to at least three competing MVPDs. Cable networks do not need to be carried by Comcast in order to survive.

27. Comcast admits that it is vertically integrated and states that the references drawn from the public online sources cited in paragraph 27 are as of dates when accessed.

28. Comcast denies the first sentence and states that the *Comcast-NBCUniversal Order* and DOJ decree referenced in paragraph 28 speak for themselves.

29. Comcast denies the premise of paragraph 29. Comcast admits that it has been the target of program carriage complaints, and has alerted its shareholders to this fact. Comcast denies the remaining statements in paragraph 29.

30. Comcast denies the premise of and statements in paragraph 30.

31. Comcast admits the first and third sentences in paragraph 31. Comcast lacks sufficient information to confirm or deny the remaining statements.

32. Comcast admits that it did not advise Word that it was planning to reduce distribution prior to November 11, 2016. Comcast denies the remaining statements in paragraph 32. Comcast's Content Acquisition team engaged in substantial research and analysis in making its decision, and consulted with individuals familiar with African American-oriented religious programming. Comcast incorporates the text of paragraphs 13, 15-16, and 19 of its Answer regarding Comcast's identification of markets where it was willing to consider the possibility of continuing to distribute Word following the November 22, 2016 meeting.

33. Comcast denies the statements in paragraph 33, except to state that on November 14, 2016 members of Comcast's Content Acquisition team spoke with Mr. Adell and explained the reasons for Comcast's decision, and met in person with Mr. Adell and John Mattiello on November 22, 2016, at Mr. Adell's request.

34. Comcast denies the statements in paragraph 34, except admits that Word did provide a presentation about the network, including showing highlight videos.

Comcast denies that Ms. Gaiski ever made any disparaging remarks regarding this presentation or regarding any persons who appeared in the highlight videos.

35. Comcast denies the statements in paragraph 35. Comcast states that it explained the reasons for its decision to reduce Word's carriage during the meeting and in other discussions with Word.

36. Comcast denies the statements in paragraph 36. Comcast states that it never demanded digital rights from Word.

37. Comcast admits that ministers who appear on Word engaged with Comcast representatives and that Bishop Charles Ellis III called Ms. Gaiski on November 15, 2016 to discuss Word. Comcast denies that efforts by Word were met with a lack of interest by Comcast, and states that Antonio Williams, Director of Governmental and External Affairs, who attended the November 22, 2016 meeting with Word and regularly represents Comcast in conversations with community leaders and government officials, spoke with religious leaders who contacted Comcast and kept members of the Content Acquisition team apprised of these communications.

38. Comcast admits that Antonio Williams called Bishop Ellis to explain the reasons for Comcast's decision to reduce Word's carriage.

39. Comcast admits that it did not expressly request that Mr. Adell visit Comcast's headquarters, but states that Comcast's programming partners typically check in at least once or twice a year to make sure the Comcast team is aware of any significant changes to their networks and to make an effort to strengthen and grow the business relationship. Comcast lacks sufficient knowledge to admit or deny the rates Word charges for time slots on its network. Comcast states that Mr. Williams' role is not to

make programming decisions but rather to liaise with community leaders and government officials and communicate their perspectives to the appropriate Comcast teams. Comcast denies the remaining statements in paragraph 39.

40. Comcast admits the statements in paragraph 40.

41. Comcast admits that on or around January 12, 2017, Comcast eliminated distribution of Word on the systems identified in Comcast's November 11, 2016 letter, and replaced Word with Impact. Comcast denies that "no minister on the call has since heard back from Mr. Williams" following the call referenced in paragraph 40, and states that Mr. Williams had a follow-up call with Rev. Jesse Jackson on December 13, 2016.

42. Comcast denies the statements in paragraph 42, and states that the Commission has made clear that the *prima facie* requirement applies to complaints brought under the program carriage discrimination provision of the *Comcast-NBCUniversal Order*.

43. Comcast admits the statements in paragraph 43.

44. Comcast states that the *Comcast-NBCUniversal Order* speaks for itself, and denies the remaining statements in paragraph 44.

45. Comcast admits the statements in paragraph 45.

46. Comcast states that the *Comcast-NBCUniversal Order* speaks for itself. Comcast denies the statements in the last two sentences of paragraph 46.

47. Comcast denies the premise of the statements in paragraph 47 and states that Comcast did not demand Word's digital rights. Comcast states that, to the extent that it is referenced, the *Comcast-NBCUniversal Order* speaks for itself.

48. Comcast denies the premise of and the statements in paragraph 48, except to state that the quoted text of the Commission's program carriage rules speaks for itself. Comcast denies that digital rights constitute a financial interest within the meaning of the program carriage rules.

49. Comcast lacks sufficient information to confirm or deny the facts asserted about Word's founding. Comcast understands that Word features ministers, a religion-focused television lineup, and gospel music. Comcast denies the remaining statements in paragraph 49.

50. Comcast lacks sufficient information to confirm or deny the statements in paragraph 50.

51. Comcast lacks sufficient information to confirm or deny Word's distribution by MVPDs other than Comcast. Comcast states that it reduced its distribution of Word from approximately { } million customers to approximately { } million customers in January 2017.

52. Comcast lacks sufficient knowledge to confirm or deny the statements in paragraph 52, except admits that Word makes its programming available over the Internet through its website.

53. Comcast understands that Word features a variety of ministers and gospel music on its network. However, Comcast lacks sufficient information to confirm or deny the statement in paragraph 53 with regard to consumers' reliance on Word "for spiritual edification and guidance," but states that Comcast received *de minimis* complaints from customers in the affected local markets following the reduction in Word's carriage.

54. Comcast admits that Word provides live coverage from religious events to customers, but lacks sufficient information to confirm or deny whether Word's programming is valuable to the old and disabled.

55. Comcast lacks sufficient information to confirm or deny the statements in paragraph 55 with regard to the strength of Word's web presence or the size of its call volume.

56. Comcast denies paragraph 56 and states that it had legitimate business reasons for its decision to reduce Word's distribution.

57. Comcast denies the first sentence of paragraph 57, and states that carriage of Word does indeed impose costs on Comcast in the form of opportunity cost associated with the use of Comcast's limited bandwidth to carry Word and not another network its customers may value more. Comcast admits the claim in the second and third sentences of paragraph 57 that Word provides its signal to Comcast free of charge. Comcast denies the remaining statements in paragraph 57.

58. Comcast denies paragraph 58, and states that Comcast carries Word on its digital preferred (D1) tier in the relevant markets.

59. Comcast denies paragraph 59.

60. Comcast lacks sufficient information to admit or deny the statements in paragraph 60.

61. Regarding the first sentence in paragraph 61, Comcast denies that there is a significant difference in quality between Word and Impact. Comcast lacks sufficient information to admit or deny the remaining sentences in paragraph 61.

62. Comcast denies paragraph 62 and states that Impact features a broad array of programming, as well as many of the same ministers as Word, many of which are also available on other unaffiliated religious networks Comcast carries.

63. Comcast denies paragraph 63, except it lacks sufficient information to admit or deny the statements about the distribution of Word by other MVPDs.

64. Comcast denies paragraph 64.

65. Comcast admits the statements made in paragraph 65 regarding ceasing distribution in the Washington, D.C. and Baltimore markets, but states that its decision regarding the markets in which to maintain Word's distribution was based on where it made business sense to do so in light of consumer demand and bandwidth in those markets, and not solely on demographics. Indeed, Comcast retained distribution of Word in Word's home markets.

66. Comcast denies the statements made in paragraph 66 and incorporates the text of paragraphs 11-16 of its Answer.

67. Comcast denies paragraph 67.

68. Comcast denies paragraph 68 and states that Comcast provided Word with several of the legitimate factors Comcast considered in arriving at its decision to reduce Word's distribution.

69. Comcast denies paragraph 69. These statements mischaracterize Comcast's meetings and discussions with Word. Comcast states that it explained to Word its reasons for reducing Word's carriage, and was willing to consider maintaining Word's carriage in additional markets following the November 22, 2016 meeting.

70. Comcast denies making its decision solely for the reasons stated in paragraph 70 and incorporates paragraphs 56-60 of its Answer.

71. Comcast admits the statement in paragraph 71 that Antonio Williams, Director of Governmental and External Affairs, engaged in outreach to ministry programmers, except to state that Mr. Williams was familiar with the decision-making process, attended the November 22, 2016 meeting with Word, and kept the Content Acquisition team apprised of communications with the ministry programmers.

72. Comcast denies the claims in paragraph 72 and states that Comcast did not increase the distribution or the per-subscriber fees of any affiliated network in connection with the reduction of Word's distribution; the only network to receive a corresponding increase in distribution was the unaffiliated Impact Network.

73. Comcast denies paragraph 73. Comcast states that it does not make decisions regarding the distribution and fees for its affiliated networks on the basis of affiliation, but rather based on Comcast's reasonable business judgment of the networks' value proposition to Comcast and its customers.

74. Comcast admits that it pays fees to carry its affiliated networks, but denies that the fees are based on affiliation; Comcast pays carriage fees to hundreds of networks, the vast majority of which are *unaffiliated* with Comcast. Comcast further states that Word incorrectly relies on *industry-wide average* monthly subscriber fee data to allege that Comcast pays above-average license fees for its affiliated networks. If anything, these data demonstrate the value of the Comcast-affiliated networks to *other* MVPDs.

75. Comcast denies paragraph 75 and states that Comcast's carriage of NBC Universo (formerly mun2) has remained { }, and was not